

**IN THE UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: DIGITEK LITIGATION

MDL NO. 1968

THIS DOCUMENT APPLIES ONLY TO:

**Edward G. Elias, Individually and as
Representative of the Estate of Pearl
Louise Elias, and for all Wrongful
Death Beneficiaries,**

No. 2:09-cv-01041

Plaintiff,

v.

Actavis Totowa, LLC, et al.,

Defendants.

**APPLICATION TO APPEAR TELEPHONICALLY AT NOVEMBER 17, 2010
DOCKET CONFERENCE & DECLARATION OF WALTER L. BOYAKI IN SUPPORT**

Plaintiff's attorney Walter L. Boyaki seeks permission to have him or his partner appear telephonically at the Docket Conference scheduled in the above referenced matter on November 17, 2010 at 9:00 a.m. because Mr. Boyaki has a scheduling conflict in that he will be in trial in a medical malpractice case in the 346th Judicial District Court, El Paso County, Texas, case styled *Raymond Schweitz v. Gregory Misenheimer, M.D.*, Cause No. 2007-3943. He is also set for mediation on November 16, 2010 in *Montoya v. Sanchez*, Cause 2008-3514, El Paso County, Texas. Moreover the travel time from El Paso, Texas to Charleston, West Virginia is more than 10 hours, with round trip airfare costing \$1804.80.

Local Rule 78.1 permits an attorney to appear telephonically with Court approval.

Mr. Boyaki seeks such approval here. If such approval is given, Mr. Boyaki will make a diligent effort to be on the phone at the designated time. However, if the hearing is delayed or overlaps with the trial, Mr. Boyaki requests that the Court permit his partner to appear on his behalf. The partner will be fully familiar with the facts of the case and Mr. Boyaki's schedule. Alternatively, Mr. Boyaki requests that his appearance be excused upon his filing a detailed declaration outlining his availability and preferred trial schedule.

If permission to appear telephonically is granted, Mr. Boyaki will make arrangements with the Court clerk to work out a procedure, either through Court Call or other court-preferred method.

DATED: November 3, 2010.

Respectfully submitted,

/s/ Walter L. Boyaki
WALTER L. BOYAKI
State Bar No. 02759500
HADLEY A. HUCHTON
State Bar No. 00785980
Miranda & Boyaki
4621 Pershing Drive
El Paso, Texas 79903
(915) 566-8688
(915) 566-5906 fax

ATTORNEYS FOR PLAINTIFF

DECLARATION OF WALTER L. BOYAKI

I, Walter L. Boyaki, declare:

1. I am an attorney authorized to practice law in this case in the United States District Court for the Southern District of West Virginia and licensed to practice laws in the State of Texas. I represent Edward G. Elias, Individually and as Representative of the Estate of Pearl Louise Elias, and for all Wrongful Death Beneficiaries, in the above captioned litigation. The following facts are based on my personal knowledge and review of the file, and if called upon to testify, I would and could testify to the matters herein.

2. I have a scheduling conflict in that I will be in trial in a medical malpractice case in the 346th Judicial District Court, El Paso County, Texas, case styled *Raymond Schweitz v. Gregory Misenheimer, M.D.*, Cause No. 2007-3943. I am also set for mediation on November 16, 2010 in *Montoya v. Sanchez*, Cause 2008-3514, El Paso County, Texas. Moreover the travel time from El Paso, Texas to Charleston, West Virginia is more than 10 hours, with round trip airfare costing \$1804.80.

I declare under penalty of perjury under the laws of the State of West Virginia and that foregoing is true and correct and that this Declaration was signed on November 3, 2010 in El Paso, Texas.

DATED: November 3, 2010.

Respectfully submitted,

/s/ Walter L. Boyaki
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State Bar No. 02759500
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El Paso, Texas 79903
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CERTIFICATE OF SERVICE

I certify that on the 3rd day of November, 2010, the above and foregoing was forwarded to all attorneys of record by use of the Court's CM/ECF system.

/S/ Walter L. Boyaki
WALTER L. BOYAKI